

TPW/NAM/ELDC/HDRK: USAO 2015R00190

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

NGHIA HOANG PHO,
Defendant

CRIMINAL NO.

(Willful Retention of National Defense
Information, 18 U.S.C. § 793(e);
Forfeiture 18 U.S.C. § 981(a)(1)(C),
21 U.S.C. § 853, 28 U.S.C. § 2461(c))

INFORMATION

COUNT ONE

(Willful Retention of National Defense Information)

The Acting United States Attorney for the District of Maryland charges that:

At all times material to this information:

General Allegations

The Defendant

1. Defendant **NGHIA HOANG PHO** ("PHO") was a resident of Ellicott City, Maryland.
2. Beginning in or about April 2006, and continuing through in or about 2016, **PHO** was employed as a Tailored Access Operation ("TAO")¹ developer for the National Security Agency ("NSA") in Maryland. In connection with his employment, **PHO** held various security clearances and had access to national defense and classified information.

¹ At some point during **PHO**'s employment, portions of TAO's responsibilities were reorganized into Computer Network Operations ("CNO").

Classified Information

3. Pursuant to Executive Order 12958 signed on April 17, 1995, as amended by Executive Order 13292 on March 25, 2003, and Executive Order 13526 on December 29, 2009, national security information was classified as "TOP SECRET," "SECRET," or "CONFIDENTIAL." National security information was information owned by, produced by, produced for, and under the control of the United States government that was classified as follows:

a. Information was classified as TOP SECRET if the unauthorized disclosure of that information reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority was able to identify and describe.

b. Information was classified as SECRET if the unauthorized disclosure of that information reasonably could be expected to cause serious damage to the national security that the original classification authority was able to identify and describe.

c. Information was classified as CONFIDENTIAL if the unauthorized disclosure of that information reasonably could be expected to cause damage to the national security that the original classification authority is able to identify and describe.

4. Access to national security information classified at any level could be further restricted through compartmentation in Sensitive Compartmented Information ("SCI") categories. Only individuals with the appropriate security clearance and additional SCI access(es) could have access to such classified national security information.

5. Classified information, including SCI, was marked according to its classification and applicable SCI compartments, following standard formats for different types of media, including headers and footers stating the highest classification level and SCI compartments of information a document contained and individual classifications markings for each paragraph.

6. Information classified at any level could only be accessed by persons determined by an appropriate United States government official to be eligible for access to classified

information, who had signed an approved non-disclosure agreement, who received a security clearance, and who had a need to know the classified information. Classified information could only be stored in an approved facility and container.

National Security Agency

7. The NSA was a U.S. government intelligence agency with various offices and facilities, and was a component of the United States Intelligence Community and the United States Department of Defense ("DoD"). The NSA's primary facility and headquarters were at Fort Meade in the District of Maryland. The NSA was responsible for, among other things, collecting, processing, and disseminating intelligence derived from intercepted foreign communications to U.S. policy-makers and military forces, and protecting secure government systems that handle classified information and were otherwise critical to military and intelligence agencies. The NSA's TAO involved operations and intelligence collection to gather data from target or foreign automated information systems, networks, and also involved actions taken to prevent, detect, and respond to unauthorized activity within DoD information systems and computer networks, for the United States and its allies.

PHO's Training Regarding and Access to Classified Information

8. PHO was required to receive and maintain a security clearance to be employed at the NSA. PHO held security clearances up to TOP SECRET//SCL.

9. Over his many years holding a security clearance, PHO received training regarding classified information, including the definitions of classified information, the levels of classification, and SCL, as well as the proper handling, marking, transportation, and storage of classified materials. PHO received training on his duty to protect classified materials from unauthorized disclosure, which included complying with handling, transportation, and storage requirements. PHO was told that unauthorized removal of classified materials and